

Wallberg shows the lower end of 9 comprises a latch member. Applicants previously amended independent Claims 1 and 19 to include that the movement of the latch member by the cylinder is "substantially vertical" between the disengaged and the engaged positions. However, the Examiner states that Applicants' argument regarding the insertion of "substantially vertical" into Claims 1 and 19 has been considered by is not deemed persuasive since the latch member in Wallberg, Albright and Youngers are all deemed to move substantially vertical. The Examiner particularly notes Figure 3 in Wallberg.

Applicants respectfully disagree with the Examiner. For anticipation under 35 USC § 102, the reference must teach every aspect of the claimed invention either explicitly or impliedly. Any feature not directly taught must be inherently present. (MPEP § 706.02). Furthermore, the stated test is whether a reference contains an 'enabling disclosure'... ." In re Hoeksema, 399 F.2d 269, 158 USPQ 596 (CCPA 1968). A reference contains an "enabling disclosure" if the public was in possession of the claimed invention before the date of invention." Such possession is effective if one of ordinary skill in the art could have combined the publication's description of the invention with his [or her] own knowledge to make the claimed invention." In re Donohue, 766 F.2d 531, 226 USPQ 619 (Fed. Cir. 1985). In other words, the reference must be operable. However, it is possible to make a 35 USC § 102(b) rejection even if the reference does not itself teach one of ordinary skill how to practice the invention, i.e., how to make or use the article disclosed. If the reference teaches every claimed element of the article, secondary evidence, such as other patents or publications, can be cited to show public possession of the method of making and/or using. In re Donohue, 766 F.2d at 533, 226 USPQ at 621. (MPEP § 2121.01). In the present case, Wallberg does not teach or suggest substantially vertical movement of the latch member 9' (Fig. 3) with the use of the articulated arm 7 (Fig. 1) as is disclosed in Applicants' Claims 1, 19 and 29. More correctly, Wallberg teaches two distinct inventions. The first invention includes an articulated arm 7 that is cantilevered in a manner that provides angular movement of the latch member 9. The second invention does not include an articulated arm but, in fact, the latch member 9' is directly connected with the piston rod 6 of the compression cylinder 4 for substantially vertical movement. Applicants' Claims 1 and 19 include a pivot member having spaced first, second, and third contact positions located thereon. It is assumed that the

Examiner believes that the pivotal member of Applicants' Claims 1, 19 and 29 is equivalent to the articulated arm 7 of Wallberg. However, even if the latch member 9' (Fig. 3) was included with the articulated arm 7 (Fig. 1), the movement of the latch member 9' would still be angular due to the cantilevered connection of the articulated arm 7. Therefore, Wallberg does not anticipate Applicants' Claims 1, 19 and 29 because it does not enable one skilled in the art to use his/her knowledge to take what is taught in Wallberg and create Applicants' Claims 1, 19 and 29. Furthermore, the combination of Albright and Youngers are not sufficient secondary evidence to provide such enablement. In particular, in Albright, as in Fig. 3 of Wallberg, the mere evidence of a substantially vertical moving latch member with the Wallberg cantilevered design would not anticipate Applicants Claims 1 and 19. Further, in Youngers, the movement of the latch member is not substantially vertical and is most definitely angular. Therefore, Applicants respectfully submit that the rejection of independent Claims 1, 19 and 29 under 35 USC § 102(b) should be withdrawn in light of the arguments. Further, Applicants respectfully submit that Claims 1, 19 and 29 are allowable over the prior art of record. Additionally, Claims 2-7, 9,11,16 and 18 are dependent on independent Claim 1, either directly or indirectly, and add additional limitations therein. Therefore, the arguments asserted for Claim 1 are also applicable to the dependent claims and the rejection of Claims 2-7,9,11,16 and 18 should also be withdrawn. Further, it is respectfully submitted that Claims 2-7,9,11,16 and 18 are in condition for allowance.

The Examiner has rejected Claim 28 under 35 USC § 102(b) as being clearly anticipated by either Jones or newly cited Horton. Applicants have cancelled Claim 28 and further arguments for the allowance of Claim 28 are hereby withdrawn.

The Examiner has rejected Claim 8 under 35 USC § 103(a) as being unpatentable over Wallberg et al in view of Doering et al. The Examiner states that it is well known to use slots in connections as shown by Doering at 69. Further, the Examiner stated that the arrangement shown in Doering prevents binding and would have been obvious to provide such slots in Wallberg. Because Applicants have amended independent Claim 1, on which claim 8 depends, in a manner that should promote the allowance of Claim 1, Applicants respectfully submit that the additional limitations of Claim 8 should also be allowable. Therefore, Applicants respectfully request that the Examiner withdraw the

rejection of Claim 8 under 35 USC § 103(a) and respectfully submit that Claim 8 is in condition for allowance.

The Examiner has rejected Claims 10 and 17 under 35 USC § 103(a) as being unpatentable over Wallberg et al. The Examiner states that it is conventional to provide various controls on a construction machine to divert hydraulic fluid from the main hydraulic circuit to perform different functions and that such arrangement cannot be a basis for patentability. Again, as in the argument above, Claims 10 and 17 are dependent upon independent Claim 1 and include additional limitations therein. Because Claim 1 is believed to be in allowable form, Claims 10 and 17 should also be in condition for allowance. Therefore, Applicants respectfully request that the Examiner withdraw the rejection of Claims 10 and 17 under 35 USC § 103(a). Further, Applicants respectfully submit that Claims 10 and 17 are in condition for allowance.

The Examiner has rejected Claims 12-15 under 35 USC § 103(a) as being unpatentable over Wallberg et al. The Examiner states that it is conventional to control the cylinders together by using one handle. Again, as in the arguments above, Claims 12-15 are dependent upon independent Claim 1 and include additional limitations therein. Because Claim 1 is believed to be in allowable form, Claims 12-15 should also be in condition for allowance. Therefore, Applicants respectfully request that the Examiner withdraw the rejection of Claims 12-15 under 35 USC § 103(a). Further, Applicants respectfully submit that Claims 12-15 are in condition for allowance.

The Examiner has rejected Claims 19-27 under 35 USC § 103(a) as being unpatentable over Wallberg et al. The Examiner states that the difference between the elements in Claim 19 and Wallberg is the location of the pivots for 9 and 6 on pivot member 7. Applicants have amended Claim 19 to include that the latch member is moved substantially vertically between the disengaged and engaged positions, as in Claim 1. Therefore, the arguments that apply to Claim 1 will also apply to Claim 19. In light of such arguments, Applicants respectfully request that the Examiner withdraw the rejection of Claim 19 under 35 USC § 103(a). Further, Applicants respectfully submit that Claim 19 is in condition for allowance. Additionally, Claims 20-27 are dependent on independent Claim 19, either directly or indirectly, and add additional limitations therein. Therefore, the

arguments asserted for Claim 1 are also applicable to the dependent claims and the rejection of Claims 20-27 should also be withdrawn. Further, it is respectfully submitted that Claims 20-27 are in condition for allowance.

The Examiner has rejected Claims 1-7, 9,10, and 11-27 under 35 USC § 103(a) as being unpatentable over Albright or Youngers in view of Wallberg et al. The Examiner states that it would have been obvious to substitute for the hydraulic actuator in Albright separate cylinders pivoted to each other of 54 and 56 as claimed or add cylinders to Youngers in view of the teaching in Wallberg. Again, as stated previously, Applicants have amended independent Claims 1 and 19 to include the limitation that the latch member is moved "substantially vertically" between the disengaged and engaged positions through the action of the pivot member and associated components. Therefore, the arguments that applied to the 35 USC § 102 rejection above will also apply to the 35 USC § 103 rejection herein. In light of such arguments, Applicants respectfully request that the Examiner withdraw the rejection of Claims 1 and 19 under 35 USC § 103(a) because none of the prior art references teach or suggest a combination of the components, as in Claims 1 and 19, to achieve substantial vertical movement of the latch member. Applicants respectfully submit that Claims 1 and 19 are in condition for allowance given these limitations and the arguments given. Additionally, Claims 2-7,9,10,11-18 and 20-27 are dependent on either independent Claim 1 or Claim 19, either directly or indirectly, and add additional limitations therein. Therefore, the arguments asserted herein for Claims 1 and 19 are also applicable to the dependent claims and the rejection of Claims 2-7,9,10,11-18 and 20-27 should be withdrawn. Further, it is respectfully submitted that Claims 2-7,9,10,11-18 and 20-27 are in condition for allowance.

The Examiner has rejected Claim 10 under 35 USC § 103(a) as being unpatentable over Albright or Youngers in view of Wallberg as applied to Claim 1 above, and further in view of Jones or newly cited Horton. In particular, the Examiner stated that it would have been obvious to divert fluid from the lifting cylinders in Albright or Youngers to the latch cylinder in view of the teaching in either Jones or Horton. Again, as in the argument above, Claim 10 is dependent upon independent Claim 1 and includes additional limitations therein. Because Claim 1 is believed to be in allowable form, Claim 10 should also be in

condition for allowance. Therefore, Applicants respectfully request that the Examiner withdraw the rejection of Claim 10 under 35 USC § 103(a). Further, Applicants respectfully submit that Claim 10 is in condition for allowance.

The prior art of record has been reviewed and is believed to be inapplicable and not pertinent to the invention as claimed by the Applicants.

It is respectfully urged that the subject application is in condition for allowance and allowance of the claims in the application is respectfully requested.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Diana L. Charlton", written over a horizontal line.

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Marked Up Copy of Claims

Title : METHOD AND APPARATUS FOR RETAINING A TRACK CHAIN JOINT
Application No. : 09/726,078
Atty Docket No. : 00-422

IN THE CLAIMS

28. (Cancelled) [A method of operating a hydraulically actuated quick coupling device that connects an implement with a work machine, the work machine having a plurality of operational functions, the method comprising the steps of:

providing a supply of hydraulic fluid and a circuit for pressurizing the hydraulic fluid on one of the implement and the work machine;

utilizing a portion of the circuit for a first operational function of the work machine; and

diverting a predetermined amount of hydraulic fluid from the portion of the circuit for the first operational function to a different operational function of the work machine that engages and disengages a latch member of the quick coupling device.]